

Docket No. 1156.39104X00
Serial No. 09/684,949
September 21, 2005

REMARKS

The allowance of claim 19 and the objection to claims 3-5, 8-12 and 15-17 as containing patentable subject matter is noted with appreciation.

The present invention is a portable device which, in a preferred application, is a portable communications device. In accordance with an embodiment of the invention, a portable device 2 includes a housing 20 having a first surface 202 with an outlet 27 for egress of an acoustical signal when in a loudspeaker mode and a second surface 201 with an outlet 35 for egress of an acoustic signal when in an earpiece mode; an electroacoustic transducer 28 located within the housing for converting an electrical signal input to the transducer into an acoustical signal, the transducer being operable to output acoustical signals while in the loudspeaker mode or the earpiece mode, an acoustical path which conducts sound waves between the transducer and the outlet for the egress of an acoustic signal when in the loudspeaker mode being less attenuated than an acoustic audio path which conducts sound waves between the transducer and the outlet for the egress of an acoustic signal when in the earpiece mode. See paragraph [0020] – [00021] of the Substitute Specification. Moreover, the present invention affords an advantage in that when the user places the earpiece outlet 25 to their ear while the device is in a loudspeaker, the output will be quieter than from the loudspeaker outlet in view of the aforementioned attenuation in the acoustic path of sound waves between the transducer 28 and the outlet 25 used for the earpiece mode. See paragraph [0004] of the Substitute Specification.

Claims 1, 6-7 and 18 stand rejected under 35 USC §103 as being unpatentable over WO-97/47117 (Hawker et al.) in view of U.S. Patent No. 6,292,563 (Clark et al.) and U.S. Patent No. 5,537,472 (Estevez-Alcolado et al.). These grounds of rejection are traversed for the following reasons.

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Claims 1 and 7 cover a portable device including an electro-acoustic transducer located within the housing for converting an electrical signal input to the transducer into an acoustic signal, the transducer being operable to output acoustic signals when in the loudspeaker mode or the earpiece mode, an acoustical audio path which conducts the acoustic signal as sound waves between the transducer and the outlet for the egress of an acoustical signal with the loudspeaker mode as recited in claim 1 being less attenuated than in an acoustic path which conducts an acoustical signal as sound waves between the transducer and the outlet for the egress of the acoustic signal when in the earpiece mode and with the hands-free mode as recited in claim 7 being less attenuated in acoustical audio path which conducts an acoustical signal as sound waves between the transducer and the outlet for the egress of the acoustic signal than in the earpiece mode. This subject matter has no counterpart in the suggested combination of Hawker et al., Clark et al., and Estevez-Alcolado et al.

The Examiner correctly recognizes that Hawker et al. "is silent on an acoustical audio path being attenuated and an acoustical audio path which conducts the acoustical signal as sound waves between the transducer and the outlet for egress of an acoustic signal when in the hands-free mode being less attenuated than an acoustical path which conducts an acoustical signal as sound waves between the transducer and the outlet for the egress of a-the acoustical signal when in the earpiece mode." However, the proposed combination of Clark et al. and Estevez-Alcolado et al. do not cure the admitted deficiency. Clark et al. merely teaches that the amplification of an audio signal is dependent upon the sensing of the position of cover 10 by switch 32 which is coupled to circuit board 14. As illustrated in Fig. 4, when the telephone is in a closed position, conductor 31 is connected to the switch 32 enabling the amplification circuit on the circuit board. See column 3, lines 1-34.

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Therefore, a person of ordinary skill in the art understands that Clark et al. does not teach a volume attenuator and suggests to a person of ordinary skill in the art that when the cover is closed the amplification circuit on the circuit board 14 is energized providing enhanced speaker output achieved by amplifier gain.

The absence of amplifier gain when the cover is open would not be considered by a person of ordinary skill in the art to be "attenuation" and is properly interpreted as only volume control.

The Examiner has erred in the construction of "attenuation" to represent volume control by an amplifier. Amplifiers are understood by persons of ordinary skill in the art to provide gain which is different than attenuation. Therefore, the broadest reasonable construction of the teachings of Clark et al. is that when the phone is in the open position, gain is not added to the signal applied to the speaker and when the phone is in the closed position, gain is applied by the amplifier to the signal coupled to the speaker.

Moreover, the Examiner's reliance upon Estevez-Alcolado et al. for teaching an acoustic baffle that would motivate a person of ordinary skill in the art to modify Hawker et al. and Clark et al. to arrive at the claimed subject matter of claims 1 and 7 would not result in the claimed subject matter. While Estevez-Alcolado et al. does teach an acoustic baffle, the purpose of the acoustic baffle is to enhance the acoustics of the speakerphone as taught in lines 15-20 of column 4 which has nothing to do with the claimed acoustic signal attenuation. A person of ordinary skill in the art would not consider the teachings of Estevez-Alcolado et al. to disclose anything relevant to the claimed attenuation of sound waves within an acoustical audio path which conducts an acoustic signal as sound waves.

The teachings of Hawker et al., Clark et al. and Estevez-Alcolado et al. are collectively silent regarding an acoustical audio path which conducts the acoustical

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signal as sound waves between the transducer and the outlet for the egress of an acoustic signal and further does not disclose that there is less attenuation of the acoustical signal as sound waves between the transducer and the outlet in the loudspeaker mode and hands-free modes as recited in claims 1 and 7.

The only reason why a person of ordinary skill in the art would be motivated to arrive at the subject matter based upon the proposed combination of references of Hawker et al., Clark et al. and Estevez-Alcolado et al., is by impermissible hindsight.

Dependent claim 6 further limits claim 1 in reciting that the device is a portable telecommunications device. Claim 6 is not anticipated for the reasons set forth above with respect to claim 1.

Claim 18 recites a portable device reciting a first acoustical audio path and a second acoustical audio path in combination with attenuation means within the second acoustical audio path for attenuating the acoustic signal which is recited as sound waves in the first and second audio paths whereby the acoustical signal egressing from the first outlet has an amplitude that is greater than an amplitude of the acoustic signal egressing from the second outlet. The proposed combination of Hawker et al., Clark et al. and Estevez-Alcolado et al. does not meet this subject matter for the reasons set forth above since the collective teachings of these references do not teach the claimed attenuation means within the second acoustical audio path for attenuating the acoustic signal, whereby the acoustic signal egressing from the first outlet has an amplitude that is greater than an amplitude of the acoustic signal egressing from the second outlet.

Claims 2 and 14 stand rejected under 35 USC §103 as being unpatentable over Hawker et al. and Clark et al. in view of U.S. Patent No. 5,379,338 (Umemoto). Since claim 2 is dependent on claim 1, it is understood that the Examiner is also relying upon Estevez-Alcolado et al. in view of its utilization in the rejection of claim 1

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as being obvious. These grounds of rejection are traversed for the following reasons.

Claim 2 further limits claim 1 in reciting that the attenuator is provided between the transducer and the outlet for the egress of the acoustic signal when in the ear-piece mode. Umemoto does not cure the deficiencies noted above with respect to claim 1. Claim 2 is patentable for the same reasons set forth above with respect to claim 1.

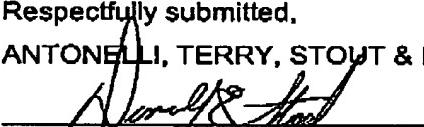
Claim 14 further limits claim 2 in reciting that the device is a portable communications device. Claim 14 is patentable for the same reasons set forth above with respect to claim 2.

In view of the foregoing remarks, it is submitted that each of the claims in the application is in condition for allowance. Accordingly, early allowance thereof is respectfully requested.

Applicants request any shortage or excess in fees in connection with the filing of this paper, including extension of time fees, and for which no other form of payment is offered, be charged or credited to Deposit Account No. 01-2135 (Case: 1156.39104X00).

Respectfully submitted,

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